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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. [redacted]riginal. 16

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

versus

THE STATE OF MISSISSIPPI,
Defendant.

Original Brief of the State of Louisiana, Complainant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 22, Original.

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

versus

THE STATE OF MISSISSIPPI,
Defendant.

Original Brief of the State of Louisiana, Complainant.

SYLLABUS.

JURISDICTION.

1. The judicial power of the United States shall extend * * * to controversies between two or more States.

Constitution of U. S., Art. 3, Sec. 2.

2. The Supreme Court of the United States has *exclusive jurisdiction of all controversies of a civil nature where a State is a party*, except between a

State and its citizens or aliens, in which latter case it shall have original, but not exclusive, jurisdiction.

State of New Hampshire v. Louisiana, 27 L. Ed., 665.

Judicial Code, Sec. 33.

3. The original jurisdiction of the Federal Supreme Court extends to suits by one State against another.

Oklahoma v. Texas, 66 L. Ed., 771.

Oklahoma v. Texas, 65 L. Ed., 832.

Louisiana v. Mississippi, 50 L. Ed., 913.

4. Such suit is one in equity.

Oklahoma v. Texas, 65 L. Ed., 832.

Arkansas v. Mississippi, 63 L. Ed., 832.

CONTROVERSY BETWEEN STATES.

5. A dispute between States respecting their boundary line, "*creates a controversy between the States in their sovereign capacity.*"

Louisiana v. Mississippi, 50 L. Ed., 913.

BOUNDARY LINE.

6. The original boundary between the States of Louisiana and Mississippi from the 33rd degree north latitude, to the 31st degree was the Mississippi River.

Louisiana v. Mississippi, 50 L. Ed., 914-915.

7. The middle of the channel of navigation—not necessarily the deepest part—is commonly adopted as the boundary line, where navigable water constitutes the boundary line between two States.

Minnesota v. Wisconsin, 64 L. Ed., 558-563-564.
Iowa v. Illinois, 37 L. Ed., 57.
Washington v. Oregon, 53 L. Ed., 969.
Arkansas v. Tennessee, 62 L. Ed., 638.

8. The channel of navigation is called the thalweg, and in a river dividing two States, constitutes the boundary line. This is not necessarily the physical middle line.

Minnesota v. Wisconsin, 64 L. Ed., 563.

9. The boundary line between the States of Louisiana and Mississippi is the boundary line as it existed at the date of the Treaty by which Louisiana was acquired, subject to changes made by erosion or accretion.

See *Oklahoma v. Texas, 67 L. Ed., 435.*

10. In the application of this principle the boundary line between the States of Louisiana and Mississippi is necessarily reckoned from the date of the earliest surveys and plats, which is 1823 and 1824, as these plats afford the earliest evidence of the location of the Mississippi River. The line is as it then existed, subject to changes by erosion and accretion.

11. Where a navigable river is the boundary line between two States and the channel of navigation

is changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying courses of the stream.

New Mexico v. Texas, 72 L. Ed., 127, in No. 4.
Oklahoma v. Texas, 69 L. Ed., 578, in No. 5.
Oklahoma v. Texas, 68 L. Ed., 1120.
Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Tennessee, 62 L. Ed., 638.
Nebraska v. Iowa, 36 L. Ed., 186.
New Orleans v. U. S., 9 L. Ed., 573.
L. R. A., 1918 D., 258.

12. An avulsion is where a river suddenly leaves its old channel and makes a new one, either from natural or artificial causes.

Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Mississippi, 63 L. Ed., 832.
Arkansas v. Tennessee, 62 L. Ed., 638.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

13. Where, in a stream which is the boundary line between two States, an avulsion occurs, the resulting change in the channel works no change in the boundary, which remains in the middle of the old channel as it existed just prior to the avulsion (subject to change by accretion as long as the water continuously flows therein).

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 1213-638.
Oklahoma v. Texas, 67 L. Ed., 435.

Arkansas v. Mississippi, 63 L. Ed., 832.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

14. Suddenly does not mean a specific length of time. Its meaning is relative, depending for its length of time upon the subject to which it is applied. To suddenly shoot an antagonist would mean instantly.

    For a river to suddenly change its course by avulsion and cut through a six-mile neck of land, might require a year. The process of cutting might be sudden and forcible, and rapid, but the time required would depend to some extent upon the width of the land to be cut through to make the new channel.

15. Whether a cut-off in a river requiring a year or more to make can be called an avulsion is immaterial, as the same principles of law that apply to an avulsion must necessarily apply to such cut-off.

16. While, after an avulsion or cut-off made by a river which is the boundary between two States, the boundary immediately after the cut-off is the same, as just prior thereto, such boundary is subject to change by accretion as long as the water *continuously* flows through the old channel, but when the water ceases to run therein, and becomes stagnant, the boundary line becomes *fixed* in the middle of the old channel at such time and the gradual filling up of the bed that ensues, is not

to be treated as an accretion, but as an ultimate effect of the avulsion.

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 638.

17. In establishing such boundary line in the old channel, "absolute accuracy is not attainable. A degree of certainty that is reasonable, as a practical matter, having regard to the circumstances is all that is required."

Arkansas v. Tennessee, 70 L. Ed., 208.

18. Where there is an avulsion causing the drying up of the old bed, it does not have the effect of establishing as the boundary the ancient boundary, as it existed at the earliest record.

Arkansas v. Tennessee, 62 L. Ed., 639.

19. Where the water cuts through an accretion *once vested*, it does not destroy the ownership of the land cut off from the main body.

DeLassus v. Faherty, 164 Mo., 361; 64 S. W., 183.
Cited in *15 Dec. Nav. Waters, Sec. 44 (3).*

20. Where a navigable river is the boundary between two States and the river is changed several miles by erosion on one side and accretion to the other, the boundary between the States changes with the river, although the accretion to one State covers the *location* formerly belonging to the other State.

See *Doebbeling v. Hall, 41 A. L. R., 389.*

21. Land formed beginning next to the shore extending into the channel is accretion, though higher next to the channel.

State of Kansas v. Merriweather, 182 Fed., 457.
15 Dec. Nav. Waters, Sec. 44 (3).

22. One asserting material changes in the course of a boundary river which will affect the boundary has the burden of proving them.

Oklahoma v. Texas, 67 L. Ed., 428.

23. Circumstances sometimes carry with them a conviction which the most positive testimony will sometimes fail to produce.

The Robert Edwards, 5 L. Ed., 238.

24. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, be sufficient to constitute conclusive proof.

Kemper v. Churchill, 19 L. Ed., 461.
Castle v. Bullard, 16 L. Ed., 421.
Wagner v. Hall, 21 L. Ed., 504.

25. The mere fact of the assertion of territorial jurisdiction by a government over territory in dispute between it and another one, and the enforcement there of its civil and criminal laws for a period of years, is not sufficient to establish its title to the territory where there has been neither a continuous assertion of right on the one side, nor an acquiescence therein upon the other.

State of Oklahoma v. State of Texas, 171 L. Ed., 146.

STATEMENT SHOWING JURISDICTION.

This is a suit in equity, brought by the State of Louisiana versus the State of Mississippi, to settle a controversy between the States over the locaton of the boundary line between them.

The answer admits that such controversy has arisen between the complainant and the defendant, in which no agreement can be reached and that it is necessary that same should be settled by the Supreme Court of the United States.

The authorities to show jurisdiction are cited in the syllabus herein, in authorities numbered 1 to 8, inclusive.

STATEMENT OF FACTS.

The facts, as shown by the evidence in this case, are as follows:

That the bank of the Mississippi River, in front of what is known as Willow Point, and adjacent properties, in the Parish of East Carroll, Louisiana, subsequent to the year 1824, was added to by accretion, the river bank of the Louisiana shore gradually extending in an easterly or northeasterly direction, until in 1912, when it had reached a point about five miles east of the original western bank of the Louisiana shore, as shown by the original survey made by the United States in 1824, and that while the accretion was adding to the Louisiana shore, the bank of the Mississippi shore, at what is known as Albemarle Bend, on the Mississippi side of said river, opposite Willow Point, and adjacent

properties, had gradually worn away by erosion, caved into the Mississippi River and disappeared. The caving or erosion on the Mississippi shore causing it to recede about the same distance as the accretion extended the Louisiana shore. That Tullos' Island, or Island No. 98, on the Mississippi side of the channel opposite Willow Point, and most, or all, of Hopkins' Island, a little above on the Louisiana side of the channel had caved into the river and disappeared.

That as the shore of the Mississippi River on the Louisiana side gradually extended easterly by accretion and the shore of said river on the Mississippi side gradually receded easterly by erosion, the thalweg or navigable channel of the Mississippi River, as well as the entire river, gradually and continuously moved in an easterly direction until, in 1912, it had reached a distance of about five miles from the original channel as shown by the surveys of the United States. See the testimony of Mr. West. (R. 39).

The original survey of the territory in the State of Mississippi, opposite Willow Point in Louisiana, was made in 1823, between which time and 1912, the Mississippi River shore line, on the Mississippi side, had worn away by erosion, a distance of some five miles, or more. That all, or a part of the following sections in the State of Mississippi had worn away by erosion, caved into the Mississippi River and disappeared, to-wit: Sections 8, 9, 10, 15, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33, in T. 8 N., R. 9 W. That Tullos' Island, or Island 98, which was embraced within the above sections, disappeared entirely. During the same time the Louisiana shore at Willow Point, and adjacent prop-

erties extended easterly and northeasterly by accretion, covering all, or most of the location formerly occupied by Tullos' Island, which was formerly territory of the State of Mississippi, and which had been washed away and caved into the river; and the main channel of the river having progressively swept over what had been the location of Tullos' Island.

That the State of Mississippi, under the mistaken impression that this was still Mississippi territory, undertook to sell all, or a large part of the accretions, to Louisiana which had thus made out over and covered the former location of the above sections, describing same in its patents or deeds as being the same sections shown in the original survey of 1823.

That when the Mississippi River reached the farthest eastern point from the Louisiana shore line of 1824, the earliest survey, which it did in 1912, the Louisiana shore line having travelled easterly a distance of about five miles from said earliest survey, and the Mississippi shore having receded an equal distance, the river maintaining approximately the same width, an avulsion occurred, through what was known as Willow Point bar, being the accretion attached to the Willow Point property in East Carroll Parish, La., the Mississippi River leaving its old channel and cutting a new channel through said bar.

That after the cut off of 1912, navigation continued through the old channel until 1913, after which it went mostly through the new channel. As soon as the cut off of 1912 was made, the current in the old channel slackened very much and the upper end of the old channel began to fill up by deposits, which continued

rapidly until 1916, when the upper end of the old channel had so filled that not even small boats in high water could go through it. The lower end of the old channel has never entirely closed, a chute running up from the lower end for some distance. There has been no navigation of the old channel since 1916.

After the cut off in 1912, some current, though much slackened, continued to flow through the old channel until 1916. During the period between 1912 and 1916, accretions in the old channel attached to both sides of the old channel; that is to the eastern side of Newman's Towhead (which was the eastern extremity of Willow Point bar, and by the cut off of 1912 made an Island) and the western bank of the Mississippi shore along Albemarle Bend. How much of the accretion in this abandoned channel attached to Newman's Towhead and how much to the Mississippi shore in Albemarle Bend, was not established definitely by the oral evidence; but more went to Newman's Towhead, Newman's Towhead being on the convex side and Albemarle Bend, and Mississippi shore, being on the concave side of the river, the presumption would be that most of the accretion attached to Newman's Towhead, for the reason that bars are always formed on the convex side and the deep channel is always on the concave side of the river.

The physical fact in this regard is evidence that most of the accretion in the filling up of the old channel attached to Newman's Towhead.

The most eastern part of Willow Point bar was called Newman's Towhead. This was formed prior to 1912 out on the end of the bar, next to the river. It

built up higher each successive high water until it was as high, or higher than the main Louisiana bank, and it had cottonwood and willow on it; some of it eight or ten feet high, in 1897. In 1912, at the time of the cut off, some of it was about 18 inches in diameter.

Between this Towhead and the other part of Willow Point bar, there was a depression, on which there were no trees, or very small ones. In ordinary stages of water one could walk from the Louisiana shore across Willow Point bar to Newman's Towhead, but when the water was at a high stage, small boats could run between Willow Point and Newman's Towhead. The channel of navigation of the Mississippi River, after the formation of Newman's Towhead, was at all times, prior to the cut off of 1912, east of Willow Point bar, and Newman's bar, and between Newman's Towhead and the Mississippi shore. There never was a channel of the river between Newman's Towhead and the Louisiana shore, prior to the cut off in 1912.

Walter R. Newman owned Willow Point Plantation and bar, and Newman's Towhead formed on this bar and was called Newman's Towhead on that account. The Newmans, who owned Willow Point and bar, always claimed to own Newman's Towhead, and their cattle, during their ownership, which was until about 1907, ranged upon it, and no one else had any possession or control of Newman's Towhead, prior to the time the Newmans sold same, about 1907.

The following is an epitome of what complainant's exhibits show:

"A"—Shows Government Survey of Louisiana in 1824, in T. 19, R. 13 & 14,

covering Willow Point. (R. 137-147).

"B"—Shows Government Survey of Louisiana in 1924, *in T. 18, R. 13.*

"BB"—Shows Hopkins' Island, survey in 1869 and 1870. (R. 138-147).

"C"—Is a chart of the Mississippi River Commission Survey of 1882. It also shows, in red lines, solid and broken, the 1894 survey of the Commission; being Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-151.

"D"—Is same as "C," with addition of shore and bar line of the Commission's survey of 1903-1906, and changes by accretion and erosion, being Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-151).

"E"—Is a chart of the Commission's survey of 1913, and is shown on Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-152).

"EE"—Is a certified copy of Chart No. 45, made by the Mississippi River Commission, 1879, 1880 and 1882. (R. 21).

"EEE"—Is a certified copy of Chart No. 46, made by the Mississippi River Commission, 1879, 1880 and 1882. (R. 21).

"F"—Is the same as "E" but is on a scale of 1 to 20,000 and is shown on Chart No. 47 of the Mississippi River Commission Survey. (R. 21-138-148-152-153).

"G"—Is a blue print #1 made by Capt. C. H. West, C. E., covering township and section lines of the Government Survey of 1823 of Mississippi, and of 1824 of Louisiana, and river bank lines of the same survey. (R. 138-153).

"H"—Is a blue print #2 made by Capt. C. H. West, C. E., showing river bank lines in 1882 and section lines of Government Surveys of 1823 of Mississippi, and of 1824 of Louisiana. (R. 138-139-148).

"I"—Is a blue print #3 made by Capt. C. H. West C. E., showing position of the two banks of the river as they existed at the time of the survey by the Mississippi River Commission in 1894, and section lines of Government Land Surveys of 1823 of Mississippi and of 1824 of Louisiana. (R. 138-140).

"J"—Is a blue print #4 made by Capt. C. H. West, C. E., showing the position of the Mississippi River at the time of the Commission Survey of 1913, and showing the avulsion of 1912, and

showing Government Land Survey section lines of the survey of 1823 of Mississippi and of 1824 of Louisiana. (R. 138-140).

Exhibits "G," "H," "I" and "J" are all blue prints made by Capt. C. H. West, C. E., to illustrate the changes by accretions and erosions from the time of the Government Surveys in 1823 and 1824 until 1913. Capt. C. H. West is a member of the Mississippi River Commission. (R. 138-139).

"K"—Shows land patents from State of Mississippi. (R. 6-129).

"L"—Shows tax sales by State of Mississippi. (R. 6-7-129).

"M"—Shows Charts 45 and 46 of the Mississippi River Commission combined in one map covering the reach of the Mississippi River in question. (R. 131 to 136-147).

"N"—Is a blue print showing T. 9, R. 8 West of Mississippi Survey of 1823. (R. 137-147).

At some period prior to the survey of 1894 there were two islands in the Mississippi River near Willow Point, namely Hopkins' Island and Tullos' Island, or Island No. 98.

Hopkins' Island, shown on Exhibit "BB" was in the Mississippi River, on the Louisiana side of the channel, and was Louisiana territory in 1870, and was nearly opposite but a little up the river from Tullos' Island.

Between 1870 and 1882, the evidence not showing the exact date, the Mississippi shore line began to build out in a southwesterly direction *above* Tullos Island, and Hopkins Island began to cave and disappeared, or mostly disappeared, and the channel of the river in 1882, was over the position, or most of the position formerly occupied by Hopkins' Island in 1870. In 1882, the Mississippi shore line of the river was along what had been the eastern boundary line of Hopkins' Island.

On the surveys of 1823 and in 1870, the Island in the Mississippi easterly from the most eastern part of Willow Point Plantation below Hopkins' Island was called Tullos' Island. Afterwards the islands in the Mississippi River were numbered, and Tullos' Island was numbered 98, and was afterwards called Tullos' Island, or Island No. 98. This island, as it existed at the time of the survey of 1823, is shown on the blue print marked "G." At this time it occupied parts of Sections 20, 21, 28, 29 and 30 in T. 9 N., R. 8 West, in the State of Mississippi.

The exhibit marked "H" being the survey of 1882, shows that the part of Tullos' Island, or Island 98, which lay in Sections 20, 29 and 30, had crept (caved) into the river and only that part which lay in Sections 21 and 28 existed at that time. (R. 139).

Exhibit "I" shows the two banks of the Mississippi River as they existed in 1894. At this time the Mississippi shore had receded eastward, until all of Tullos' Island, or Island 98, had disappeared and the Mississippi shore line was about 1/4th of a mile east of where Island No. 98 had been. (R. 140).

(That is, said shore line was about 1/4th of a mile east of the most eastern part of where Tullos' Island, or Island 98, had been).

Tullos' Island, or Island 98, entirely disappeared, between the time of the survey of 1882 and that of 1894.

After the survey of 1882, the next general survey was that of 1894. This survey was platted on the chart of 1882, shown as Exhibits "C" and "D." The shore lines of the survey of 1894 are shown in red lines on the face of the 1882 chart. (R. 151).

(This is Sheet No. 17 of the Mississippi River Commission Survey Plat).

Chart "C" shows the Mississippi River as it existed in 1882 in *black* lines. There is also shown on the chart of 1882, in *red lines*, the two banks of the Mississippi River, as shown by the survey of the Mississippi River Commission in 1894. The *broken red lines* on said chart indicate the edge of the bar at the time of the survey (1894). (R. 138).

(The water line of the Mississippi River in 1894, on the Louisiana bank and on the Mississippi bank, is

shown by the broken red lines, on the chart of the Mississippi River Commission of 1882).

The river above Tullos' Island, or Island 98, and along the northern part of Willow Point, and adjacent property, for a distance of five or more miles, ran in an easterly direction.

From the northern part of Willow Point there has been a gradual caving as far back as any of the witnesses could recollect. One of them, Mr. I. B. Beard, could recollect fifty years back; but he was only nine years old at that time, 1876. During that time, the caving, on the part of the Willow Point farthest up the river, had reached a distance of about one and a half miles.

While this gradual caving was in process along the north side of said Willow Point, the Mississippi shore opposite was extending in a southward direction by accretion. At the same time the eastern and northeastern part of Willow Point was extending eastwardly toward the Mississippi shore rapidly, and the Mississippi shore receding rapidly. The result was that Willow Point, Louisiana territory, gained very much more by accretion during said period, than it lost by erosion; as it had extended by accretion a distance of about five miles.

The timber on the main original bank of the Louisiana side of the river consists of cottonwood, a few sycamore, elm and gum, and other trees such as are produced by older soil.

In 1882, the timber on Tullos' Island was such as grows on older soil, there being some hackberry, gum and other timber.

The timber on Newman's Towhead was and is cottonwood and willow, such as is produced on accretions.

The timber on what defendant claims is Tullos' Island is practically all cottonwood and willow and not timber produced by older soil, but such as grows on accretions.

Testimony of Capt. George Prince.

He is fifty-six years of age, and is a steamboat captain and pilot on the Mississippi River between Memphis and New Orleans. (R. 21).

He had been a pilot for thirty years. He was acquainted with the Mississippi River at Willow Point and vicinity (Ev. 5), and had been since 1897, and had passed said place from six to ten times that year. (R. 22).

He passed said point about from six to ten times each year from 1897 to 1914, and, from 1914 to 1920, he ran there regularly. During this time he became acquainted with the conditions along the main shore. (R. 23).

Willow Point was a sandbar in 1897. It was a dry sandbar for a good way out in the river, and back two or three hundred yards there was a growth of willows and cottonwood. Willow Point was connected with the Louisiana shore, and the bar was *three* or *four* miles long when the water was low. (R. 8).

The bar extended east toward the Mississippi shore *three* or *four* miles. The bar kept building each year (R. 24) toward the Mississippi shore line, and out from the Louisiana shore line. As far back as 1897, at the time of his first acquaintance with the river at Willow Point, the current was along the Mississippi shore. In his trips he landed his boat on each side of the river at said point. (R. 25).

In 1897 there were no islands in the Mississippi River, in the vicinity of Willow Point. There has never been an island there since he had been running the river. (R. 25-26).

He never knew of Island No. 98. (R. 34).

(The Mississippi River Commission Survey showed that said island had entirely disappeared in 1894). The Willow Point bar remained connected with the Louisiana shore. (R. 26). (Until the cut-off of 1912 separated the eastern portion from the remainder). Willow and cottonwood grew on the bar, and where they grew the bar built up higher than the mainland, and this high point was called "Newman's Towhead." A towhead is kind of middle ground in the river that trees and bushes grow on. This towhead had willow and cottonwood on it. The river at this time was toward the Mississippi shore from the towhead, until 1912. (R. 27).

A towhead is a high place on a sandbar where willow trees grow generally connected with the main shore. (R. 32).

The reason the towhead builds up higher is that when the trees grow thereon, the sand piles up against them like a snow drift. (R. 32).

In 1912, the river broke through at the towhead and sandbar, and the channel of the river went through there. He was going up the river and saw the break through the willows. This was during the high water of 1912.

He did not go through the new channel at this time, but went around the main (old) channel, which was between Newman's Towhead and the Mississippi shore. (R. 27-28).

The old channel was then open. In 1916 boats could not go through there even in low water. (R. 28).

The cottonwood trees on Newman's Towhead were about 8 to 10 inches in diameter (1897). (R. 29).

Since the cut-off the old channel at the upper end of Albermarle Bend has filled up entirely. (R. 29).

In 1920, the current ran between Newman's Towhead and Willow Point. (R. 30).

Prior to 1912, Willow Point bar was higher next to the river and the high part was called *Newman's Towhead.* (R. 26-27).

It commenced to form right up the Louisiana shore, and ran down the river 4 or 5 miles. (R. 42).

The river broke through there in 1912. (R. 27).

After the cut-off, the channel of the river went down through the middle of the bar between the Louisiana shore and Newman's Towhead. (R. 31).

After the cut-off, Newman's Towhead became an island and continued to grow; the old bed filled up. (R. 31).

Up to 1912 the bar grew gradually and steadily out from the Louisiana shore, or Willow Point, toward the Mississippi shore, and the Mississippi banks were caving rapidly, and the Government was revetting the Mississippi shore at Albermarle Bend, I think, in 1910. (R. 30).

I think they continued this work two years. (R. 30).

Albermarle Bend was the channel of the river as it existed prior to 1912 between the Mississippi shore and Willow Point. (R. 26).

To my knowledge up to 1912, Willow Point sandbar had extended out toward the Mississippi shore, about 5 or 6 miles (R. 31), in a northeasterly direction. (R. 33).

When land makes by accretion, it very often leaves a lake intervening. (R. 37).

The bar in front of Tennessee Landing on the Mississippi side, extended toward the Louisiana shore close to a mile, it might have been more, he did not know. (R. 46).

This bar extended down the river more than four miles—4½ miles from Tennessee Point. (R. 46).

Testimony of Ernest Newman.

He was 37 years of age. Was born in East Carroll Parish, La. (R. 49), on *Willow Point Plantation*, being the property marked on the map as Willow Point. This place was owned by his father, Walter A. Newman. He could recollect as far back as 1897. (R. 50).

The Willow Point bar had extended out from the mainland about 3 or 3½ miles when he could first recollect, and it continued to grow, or extend toward the Mississippi shore, for about 1½ or 2 miles, until the cut-off of 1912, it had extended a distance from the main shore of 4½ or 5 miles. He lived on Willow Point until 1907, when he went to Lake Providence, in the same parish, about 25 miles north of Willow Point. (R. 50-51).

He afterwards visited Willow Point, practically every winter to hunt; after they removed from the property, they kept camp there. The State levee ran about 100 yards behind their house. It was afterwards moved back about 2½ miles. (R. 51).

The timber on the mainland was principally cottonwood and willow; some gum and some oak; outside the main shore it was principally cottonwood and some willow.

From 1897 until the cut-off in 1912, there was no island between Willow Point and the main shore (necessarily Mississippi shore). (R. 51-52).

There was what was called Newman's Towhead on the bar, as far back as the witness could recollect, and the Towhead was connected with the main Louisiana shore. There was no river between the Towhead and the shore. The main channel of navigation was east of the Towhead, between the Towhead and the Mississippi shore. (R. 52).

After the cut-off of 1912, Newman's Towhead was left on the east side of the river. (R. 52).

As the bar belonging to his father extended easterly, the Mississippi shore was caving, and revetment work was done there by the United States Government. When he first knew Newman's Towhead the timber on it was willow and cottonwood, and *was 8 or 10 feet high*, as well as he could recollect.

At the time of the cut-off in 1912, he thought it was about 18 inches in diameter. (R. 53).

We claimed Newman's Towhead. We owned the Willow Point Plantation, and the Towhead got its name from the Newman family. They had possession of the Towhead and had cattle on it. We paid our taxes in East Carroll Parish, Louisiana, and never paid any in Mississippi.

He had heard that such an island as Tullos' Island once existed. (R. 53).

But there had been no such island since he could recollect. From the time he could recollect (1897) until the cut-off (1912) there was no island at all in the Mississippi River at that place; and the first island

made there (since he could recollect) was that made by the cut-off (of 1912), leaving a part of the Newman bar on the East side of the river. He never knew of this land East of the Mississippi River (Newman's bar and Towhead) being claimed by Mississippi, until he was requested to be a witness in this case. (R. 54).

His father lived on the plantation and died there. (R. 54).

Witness had been all around the Mississippi shore and knew there was no island in the river (at the point involved). (R. 57).

At Albemarle Plantation there is now extending behind the island a chute extending in a general northerly direction; at the upper end it does not go back into the river now, but extends down and connects up (with the river below). This chute forms a lake in low water. (This chute is undoubtedly what was the former channel of the river, around Albemarle Bend).

He thought the timber was about 2 feet (in diameter) on Newman's Towhead, at the present time. Some might be over 3 feet, as it grows very rapidly on that sandbar. (R. 58).

He did not know where the old river channel of 1823 was, but there was a little chute that runs off from Henderson's; it was just a little chute behind the bar. It is just a kind of slough that runs up to Henderson's and it had been there since he could remember. This is almost south from Willow Point. (R. 59).

The map, Exhibit "J" shows Willow Point as Lots 6, 7 and 8, and it shows Newman's Towhead as going out in a general northeast direction, 5 or 6 miles, and he would judge there was more than 5000 acres of land in same, but he hardly thought his father was assessed with 5000 acres. The levee was moved back 2½ miles, and we had practically no taxes. (R. 59-60).

Testimony of George R. Newman.

Witness was 40 years old, and was born in 1886, on the *Willow* Point Plantation in Louisiana. (R. 64).

This place was owned by his father, Walter R. Newman; Ernest Newman, who testified yesterday, is his full brother. His father and mother were dead; his mother was a sister of I. B. Beard, who is here as a witness. (R. 65-66).

He could recollect back to 1893, at which time he was 7 years old. He rode about over the Willow Point sandbar, and began to hunt about that time. (R. 66).

He knew where the sandbar hit the main shore, from the change of the land and character of the timber. The timber on the main shore was cottonwood, willow, *a few big trees*, *pecan* and *sycamore*, and some *gum* and *oak*. (R. 66-67).

There is a depression at the place I have said was the mainland. The timber on Willow Point bar is cottonwood and willow. Our home was about 100 yards from the original mainland, on the outside of the levee next to the river. The levee was afterwards moved about 2½ miles further back. (R. 67-68).

We could walk at all times from the mainland out to the river, except in real high water; the bar was continuous. This condition existed until 1912, at the time of the cut-off. (R. 68).

During the time of his recollection, prior to the cut-off, there was no island in the Mississippi River, in front of Willow Point Plantation. After the cut-off, Newman's Towhead was an island, left by the cut-off east of the cut-off on the Mississippi side of the cut-off. (R. 69).

The timber on Newman's Towhead before and after the cut-off was cottonwood and willow. He was on Newman's Towhead frequently before the cut-off, but not since. He never heard of Newman's Towhead being claimed by Mississippi, until since this suit. (R. 69-70).

Witness left Willow Point in 1907 or 1908, and moved to Lake Providence, La., 25 miles distant, but returned to Willow Point every winter to hunt.

Witness was not there at the time of the cut-off, but went there immediately afterwards. The cut-off took place at the point, practically where the river runs now. (R. 70).

He had not been on the Towhead since the cut-off. (R. 71).

There was none of the towhead or land left on the east side of the channel that was in cultivation prior to the time I left there. *He never heard of Tullos' Island, or Island Number 98.* (R. 73).

He thought the towhead was 6 or 7 miles long, and 2 or 3 miles wide.

He never heard of an old plantation headquarters on said land. (R. 73-74).

Had not been on the Towhead since 1910. There was no channel where the present one now runs, prior to 1912. (R. 74).

> Q. Were not there three channels there back in the nineties, that you have been talking about?
>
> A. There was no other channel there but one that I knew anything about. (R. 74-75).

We never cut any timber off the towhead. All of the land there (Willow Point) was accretion formed by sediment from the river gradually and imperceptibly.

The lakes were formed from the fact that the filling by accretion is not level; it never fills up all the same. (R. 75).

We sold the Willow Point property in 1907 or 1908. (R. 77).

I suppose the Newman Towhead was sold with the place. The Newman family claimed the Towhead. (R. 78, 79).

I think it was in 1904 or 1905 that our house on Willow Point caved into the river. The current at this

time was against the north end of the place where the house was. (R. 79).

When I left Willow Point, about 1907, I went to Lake Providence and worked as Deputy Sheriff. Lake Providence is the parish seat. (R. 81-82).

This is in East Carroll Parish. (R. 82).

The part of Willow Point where our house was, caved in between the years 1904 and 1907, but I do not recollect the exact year. (R. 82-83).

All of Willow Point never did cave in, but it increased in size in an easterly direction, until 1912 (R. 83), while the northern part was caving, the eastern part was making; it made continuously. (R. 84).

When witness first knew Willow Point, the bar extended out about 1½ miles, and it was never less than that, but gradually got larger (R. 85), until it extended to a distance of about five miles. (R. 85).

Testimony of Mr. I. B. Beard.

He was 59 years of age; born October, 1866. Witness located Willow Point on the map marked Exhibit "C," and said it was in East Carroll Parish, La. He was born in said parish about 5 miles north of Willow Point. He became acquainted with Willow Point about 50 years ago. Walter A. Newman (who owned Willow Point) married witness' sister and Ernest Newman and George Newman were his nephews. (They were witnesses). He visited Willow Point quite often. (R. 85-86).

The Willow Point bar started where it joined the main bank. (R. 87).

On the mainland, 150 yards back of the house, there were a few *sycamore, gum* and *elm* trees. The timber on the bar was cottonwood and willow.

At the time he could first remember, the Willow Point bar had extended out one and a half, or two miles, from the mainland. It continued to grow each year until 1912, when it had extended three or four miles from the mainland, or it might have been further. The main bar was already there. The towhead began to grow, and each year it got higher and higher and *finally it got large enough for willows and cottonwood to grow on it.* (R. 88).

The bar on which the Newman Towhead arose was attached to the main shore of Louisiana. (R. 88, 89).

This bar and towhead were not severed prior to 1912. The timber on Newman's Towhead was cottonwood and willow. *When witness first knew the bar and towhead, the timber on it was from 3 to 5 feet high; it was little stuff.* It grows very rapidly. His brother-in-law cultivated a part of Willow Point, but none of Newman's Towhead that he knew of. (R. 88-89).

Prior to 1912, the main channel of the river was east of *Newman's Towhead*, and Willow Point bar, on the Mississippi side. Prior to the cut-off, witness never saw any island between Newman's Towhead and bar, and the Mississippi shore (but witness did not say there was none). After the cut-off, Newman's Tow-

head was left on the east side of the Mississippi River. Prior to 1912, there was caving on the northern part of the (R. 89-95) place, but, on the eastern part, it was extending further east.

On the northern part of Willow Point, the river ran east.

Witness never heard of any part of the property being claimed by Mississippi before he was a witness in this case.

Prior to the cut-off, the Newman heirs were regarded as the owners of Willow Point and Newman's Towhead. (R. 90).

The Newman heirs were George Newman, Ernest Newman, my sister and her family. (R. 90).

The river bounded the Willow Point property on the north side, and the river ran around the Point and also bounded it on the east side. (R. 93).

Testimony of Capt. W. H. Reed.

He was 54 years of age last March (1926). He was born at Natchez, Miss. (R. 96).

From the time he was able to work he had been a river man, timber man and steamboatman.

He is now Sheriff and Tax Collector of Adams County, Mississippi (the City of Natchez is in this county). He holds pilot's and master's licenses for steamboats, and has, since 1907 or 1908. (R. 96).

Witness' attention was directed to Exhibit "C" to complainant's bill, and he said he had been familiar with the condition of the shores at Willow Point since 1894. He and others camped on the Henderson property (adjoining). (R. 97).

He was then 22 years old. He remained there 6 weeks, gathering drift and timber for a wood yard. (R. 97-98).

At this time, there was a sandbar at Willow Point, possibly a mile wide; that is, out from the timber line to the point of the bar. It extended toward the Mississippi shore in a northeastern direction. (R. 98).

At that time this was a white sandbar, with no timber; today there is plenty there. ((R. 98).

There was timber along the main shore line in 1894. *A towhead* appeared on the sandbar. (R. 100).

The towhead was close to the Louisiana shore. (R. 100).

It continued to grow in height and size. The extreme northerly side of Willow Point property continued to cave. (R. 100).

And it continued to grow easterly, from the Louisiana shore, toward the Mississippi shore. (R. 101).

In 1900 the bar had increased about two miles, and it continued to grow east and northeaserly. (R. 102).

In 1911, 1912 and 1913, witness was towing timber past Willow Point property. In 1911, the accretions had extended out from the Louisiana shore line, about 3½ miles from the timber line of 1894, and it had extended further in 1912. (R. 103).

Witness *did not remember the exact year the towhead started to form but it became prominent in 1900. Steamboatmen took it as a land mark.* The Newman towhead was the last one; there was another inside the timber line. The Newman towhead was located on the outer part of the bar, *I would say 150 yards off from the timber* line on Willow Point property. (R. 103-104).

Cottonwood and willow grew on the Newman towhead; it was from 5 to 8 inches through in 1900.

In 1912 the river commenced to wash out the depression between the towhead and the main timber line on the bar.

It washed out quite an extent. (R. 104-105).

And made the cut-off virtually, but did not clean it out until 1913.

We used the old channel until 1913, when we began to use the new channel. (R. 105).

Prior to 1912 there was no island in the river. There was a towhead on Newman's bar; after the cut-off of 1912, Newman's towhead became an island, east of the new channel of the river. (R. 106).

Prior to the cut-off, there was a depression between the towhead and the old timber line, and, I think, in extremely high water, small boats went through there. (R. 107).

Prior to the cut-off of 1912, at all times except high water, there was a continuous stretch of land from the Louisiana mainland to the extreme easterly end of Newman's towhead, a distance of about 5 miles. After the cut-off the old channel began to fill up, at the head of Newman's towhead. (R. 108).

After the cut-off Newman's towhead continued to grow in an easterly and southeasterly direction. Boats could go through the old channel around Albermarle Bend until 1916, but, in 1916, the old channel had so filled that even small boats could not pass through. (R. 108).

Witness was on Newman's towhead in 1926. The timber on same is cottonwood and willow. The largest cottonwood, about a breast high, *would measure over 30 inches outside the bark.* (R. 109).

The willow, a breast high, outside the bark, would measure about 24 inches.

There is no *old original timber* of any kind on the towhead.

After the cut-off when the *old channel around Albemarle Bend began to fill up with alluvion, these accretions attached mostly to Newman's towhead.*

From 1897 to 1912, witness travelled through Albemarle Bend at least once a year and sometimes

several times. He was captain and pilot of a small towboat. (R. 110).

As captain and pilot it was necessary for him to observe the shores on either side, keep posted as to the condition of the bank, the course to run, the sandbars, and all changes that took place on either side of the river.

Albemarle Bend was the main channel of the river from 1897 to 1912. Between 1897 and 1912, there were no islands in Albemarle Bend between Newman's towhead and the Mississippi mainland. In Albemarle Bend on the Mississippi shore, between 1897 and 1912, the banks were rapidly caving. (R. 110).

Until the Government commenced to revet there (Albemarle Bend), the caving was so very bad that (the bank) *was almost straight down.* I think the Government began revetting there in the low water of 1910. At the point the Government revetted it would stop caving, but where it was not revetted *it was going in by the acre,* until the day of the cut-off. When the levees began to cave in they moved the line of levee back by looping; another cave would come and they would make another loop.

As soon as the cut-off occurred the current slackened in the bend. (R. 11). (This slackened current caused the old channel to fill).

A towhead is a place that builds up on a sandbar that grows out from the shore and is higher than the sandbar. (R. 123).

Cottonwood and willow usually grow on it, *sometimes hardwood, scrubby stuff;* that depends on conditions.

Where the cabin is on the towhead the bank is some 10 or 12 feet high. Immediately on that bank the soil has been washed away from the edge of the trees. (R. 124).

I first noticed the towhead about 1900, and the timber on it was then 25 to 40 feet high.

The towhead was about as high as the mainland on the Louisiana side and it is now about the same. (R. 125).

Today the highest part of the island is next to the chute and the biggest timber is next to the cut-off.

There is an old field on the northeast corner of the towhead, with a bermuda patch growing there; very little vegetable stuff on it; just this scrub grass. (R. 126).

All these sandbars have bermuda grass on them. There is no poplar; there may be a few ironwood bushes.

Tullos' Island occupied the same position on the map that is now occupied by Newman's Towhead. (R. 126-127).

Tullos' Island disappeared before witness became familiar with this location, which he did in 1897. (The maps show Tullos' Island, in 1823, occupied parts of

Sections 20, 21, 28, 29 and 30, Township 9, Range 8 West).

The Newman Towhead now occupies parts of the original location of Section *15, 16, 17, 20, 21, 28 and 29.* (R. 128).

Newman's Towhead covers, in part, the place once occupied by Tullos' Island. (R. 128).

Testimony of Capt. Chas. H. West.

He is a Civil Engineer and has been for 42 years, and is a member of the Mississippi River Commission, and has been such for nearly seventeen years, or since the 5th of February, 1910, he having been appointed to that position by President Taft. He is a gradudate of the *University of Illinois*, of the class of 1884, and holds the degree in that class of B. S. and C. E., Bachelor of Science and Civil Engineer. He began the practice of engineering immediately after leaving the University, and has been in *continuous* practice ever since.

His first experience, after graduation, was on the Mississippi River, in various subordinate capacities; sometimes in the employ of the United States, sometimes in that of the Mississippi Levee District; and he sometimes did private work until 1892, when he was appointed as subordinate engineer inspector, surveyor and superintendent of construction with the United States Engineers. He was stationed some time after 1882, in Mississippi and Arkansas, *being in the two States continuously until August, 1898, at which time witness was appointed Chief Engineer of the Missis-*

sippi Levee District, which covered the territory in Mississippi opposite to Willow Point in Louisiana. (R. 129-130).

The witness was shown complainant's Exhibit "M", and asked to state what it represented and how it was made. He said this exhibit shows charts *45 and 46* of the Mississippi River Commission, instead of being on two separate sheets they had been put together on one sheet. These are charts of the survey of the Mississippi River Commission's survey of the Mississippi River, *made in 1882, upon which has been projected the township and section lines in Mississippi and Louisiana of the Government land survey in Mississippi in 1823, and in Louisiana in 1824.* The township and section lines are projected vertically upon the Mississippi River Commission map, or chart, of that section of the river. Chart 45 shows Willow Point in Louisiana, and Albemarle Bend opposite in Mississippi. (R. 130-131).

Objection was made by counsel for Mississippi to the introduction of Exhibit "M". Attention was called to the fact that there had been introduced in evidence certified copies of Charts Nos. 45 and 46 of the Mississippi River Commission, of the survey of 1882. That there was also in evidence a certified copy of the Government land survey of Township 19 North, Ranges 13 and 14 East (Louisiana survey of 1824); also a certified copy of the original land survey in Mississippi (made in 1823) of Township 9 North, Ranges 8 and 9 West; that Exhibit "M" merely combined what was shown in the four maps and charts, certified copies of which were already in evidence. (R. 131-132-133).

(The object in preparing Exhibit "M" was to present to the Court the best evidence possible to obtain the relative position of the original Mississippi survey of 1823, and the Louisiana survey of 1824, and likewise to show the changes that had taken place in the river in that locality between the time of the original surveys of 1823 and 1824, and the Mississippi River Commission survey of 1882, by projecting the townships, ranges and section shown on the two original surveys of 1823 and 1824, on the survey of the Mississippi River Commission of 1882, so that the Court could have a bird's-eye view of whole situation).

Objection still being urged, *Capt. West was asked to state how the map (Exhibit "M") was made.* He did this so fully and convincingly in his testimony, *that we merely refer the Court to it. It is shown on* ——. (R. 133 to 136).

WHAT THE EXHIBITS SHOW.

Capt. West further stated that Exhibit "A" is a chart of the Government Survey in Louisiana of 1824 (the earliest made) and showed thereon what is (now) known as Newman's Point, in Louisiana. The Government land survey of 1824 (Exhibit B), as shown on Township Plat of Township 8, Range 13, shows the territory in Louisiana bordering on the Mississippi, *below Newman's Point.*

Exhibit "N" shows Township 9, Range 8 West of the Government land survey of 1823, in Mississippi, and shows the territory on the east side of the Mississippi River, opposite Newman's Point. (R. 137).

Exhibit "BB" shows Hopkins' Island, as surveyed in 1869-1870. It was sectionized as a part of Louisiana, connected with the General Land Survey of Louisiana made in 1824.

Exhibit "C" is a chart of the Mississippi River Commission of the *survey of 1882.* This chart shows the Mississippi River in the vicinity of Newman's Point and Albemarle Bend. (R. 138). This chart shows the Mississippi River as it existed in 1882 in *black lines.*

There has been drawn on this chart in *red lines* the two banks of the Mississippi River, made from a survey of the Mississippi River Commission in 1894. These red lines were superimposed upon the chart of the survey of 1882. *(A new survey was made in 1894, but no new chart; the Commission noting in red lines the survey of 1894, upon the chart of the survey of 1882).* The red broken lines represent the bar at the time of the survey (of 1894), all of which is explained upon the face of the chart.

Exhibit "D" is the same as Exhibit "C", with the addition of the shore and bar lines of the Commission's survey of 1903.

Exhibit "E" is a chart of this reach of the Mississippi River in question made in 1913.

Exhibit "F" is a chart of the Mississippi River in question on a scale of 1 to 20,000 of the Commission's survey of 1913. (R. 138).

Exhibit "G" is a blue print, showing the township, range and section line in Louisiana and Mississippi,

covering the territory in question, of Mississippi in 1823, and of Louisiana in 1824.

Exhibits "H", "I" and "J" were made by witness (C. H. West) to illustrate the position of the river at the time of the *original Government surveys, and the changes* with respect to township and section lines, on the two sides of the river, in the *vicinity in controversy.*

The witness was then asked to give a progressive history of the changes in the Mississippi River, as shown by these maps.

This was objected to by counsel for defendant for the reason that the maps were the best evidence and his statement of what they showed would be merely an opinion. The objection was noted and the witness proceeded. (R. 138-139).

The blue print marked Exhibit "G" shows Willow Point, as defined by the Government surveys of the State of Louisiana in 1824. It also shows, *by broken and dotted lines*, the *outlines of Willow Point*, as shown by a survey made by Louisiana *in 1866.*

The *heavy lines* indicate the shores as they existed at the time of the original Government survey (1824).

(Another line of) broken and dotted lines indicates the mid-river distance, as it existed at *that time.* (1824).

This chart also shows *Tullos Island (in 1824)*, later known as Island No. 98, as being on the Mississippi side of the river, and being a part of Township 9,

Range 8 West, and as occupying parts of Sections *20, 21, 28, 29 and 30 of the above township.*

Exhibit "H" shows the position of the Mississippi River as it existed and as shown in the Mississippi River Commission survey of *1882*. This chart shows the outline of the eastern end of Willow Point, as it existed in 1869-1870, by a broken line, which is further east than the survey of 1866. It also shows the position of Hopkins Island, as it existed in 1870, and its connection with Willow Point, according to the survey which sectionized Hopkins' Island as a part of Louisiana, as shown on Exhibit "BB". (R. 138-139).

This chart shows the Mississippi (River) shore line to be about one mile east of where it was in 1823, and that the part of Tullos Island which lay in Sections 20, 29 and 30, had crept into the river and only that part (of Tullos Island) which lay in Sections 21 and 28 existed at that time (1882).

A channel of the Mississippi River in 1870 passed between Hopkins' Island and the main shore, as shown in the Government survey of Hopkins' Island, marked "BB".

After 1870, the river in the bend northeast of Willow Point began to move southwesterly, and built out the Mississippi shore a distance of 3000 feet, so that in 1882, the Mississippi shore line of the river was along what had been the eastern boundary of Hopkins' Island and the channel of the river, in 1882, was over the position which had been occupied by Hopkins' Island in 1870, having destroyed all but a small part of the southwestern extremity of same. (R. 140).

This was as shown by Mississippi River survey of 1882. Whether all of it (Hopkins' Island) had been destroyed at a slightly previous or slightly later date, there is no history. Witness hardly thought the southwestern extremity was destroyed, as the river from 1882 to 1913 was moving eastward from the southwestern extremity. According to the chart of 1882 it (the part of Hopkins' Island left) was connected with the Louisiana shore. (R. 145).

Exhibit "I" shows the two banks of the Mississippi River, as they existed according to the survey of the Mississippi River Commission made in 1894. This chart shows a very considerable change in the position of the river from that which it occupied in 1882.

The river along the north side of Willow Point having moved southward by caving about one mile, and having extended northeast about one mile.

At this time the Mississippi shore had receded eastward *until* all of Tullos' Island had disappeared and the shore line (of Mississippi) was about 1¼ miles east of the east shore line of Tullos' Island, or where Tullos' Island, or No. 98 had been.

Exhibit "J" is a blue print showing the position of the Mississippi River according to the Mississippi River Commission's survey and charts for 1913.

This chart shows the Mississippi River had caved along the Louisiana shore, on the north side of Willow Point, about 1½ miles.

It also shows that Albemarle Bend (on the Mississippi side of the river) had swung east and north-

east by caving off all of Sections 18, 17, 16, one-half of 8, and all of 9, except a strip on the north part, a part of 10, and the greater part of 15 and 22; about one-fourth of 27, all except a corner of 28, a part of 33, all of 31, and the greater part of 32 had caved into the river, and the Mississippi shore line at that time was about one mile east—in fact, about one mile and a quarter east of the eastern (R. 140-141) boundary formerly occupied by Tullos' Island.

This chart also shows a cut-off across the neck of land between what had been called Newman's Towhead, and the original Willow Point.

This cut-off began during the flood of 1912 and was enlarged during the flood of 1913, so that the greater part of the flow of the Mississippi River went that way (through the cut-off) during that year.

Following the cut-off the upper end of the old bend, known as Albemarle Bend, began to fill up by deposits, and in two or three years it had filled to such an extent that there was no flow around the bend, except during extremely high water.

Since 1913 the cut-off has enlarged *towards the east*, showing a tendency to build out the stub of the bar lying east of Willow Point, and cave away towards the eastward, what is known *as Newman's Towhead* (now on the Mississippi side of the river).

Prior to the cut-off of 1912 and 1913, the channel of the river was around Albemarle Bend, and the caving away of the Mississippi shore *was very rapid. In fact, it had been very rapid from the time of the 1882*

survey by the Commission, up to the time the cut-off was made. It was known as one of the most rapidly caving bends in the lower Mississippi River. (R. 141). Levee lines built in Mississippi to the east of Albemarle Bend would be in jeopardy within two or three years after they were constructed, and one retirement of the levee after another occurred, until it became a burden to raise funds to keep the levee back from the caving banks.

This condition continued until about 1909, when the bend was so long and so deep that to build a new levee would require considerable miles of levee and the cost would be so great that the Levee Board hardly felt able, with the time limits and the revenues to build that levee in one season.

It was evident that it had to be built within twelve months, or the river would get the levee that then existed, and the whole country would be open to the flood during that year.

Capt. West, the witness, had a very complete survey made of the situation in the Mississippi Levee District—that was the last year he was Chief Engineer of that district—in which he showed the probable location of the only feasible levee that could be built, and he prepared a map showing the progressive caving; and that even if the levee was built, the rate of caving that had been going on, if it continued would soon reach that levee and it would be lost.

Witness concluded that the only way to safeguard the country was to revet the Mississippi bank, and prevent further recession by caving. There was no

possible way, no equipment, and no trained forces for that revetment, except such as the Mississippi River Commission had (R. 142), so witness appeared before the Mississippi River Commission and laid before them a chart showing the heavy caving—the rapidity with which it was going on, and the utter impossibility of more than temporizing, and that at a very great cost, unless the bank was revetted and left intact.

The following year, 1910, the Mississippi River Commission sent in several revetment forces, and began revetting the bank at that point along the Mississippi shore. They did not complete the work, but in 1911 they came very near completing what appeared to be necessary.

The 1912 flood came and started the cut-off, a part of the current going through the incipient cut-off and a part around the bend, so some repairs were made in 1912. In 1913 the cut-off widened out until the current went that way, and there was no further attack on the Mississippi banks along the bend and no need for further expenditures on revetments or levees. (R. 142).

After the cut-off, for a while there was a divided flow, but the bulk of the water went the short way, as the slope at the cut-off was much greater, the velocity of the current was much greater.

The accretions began to form around the bend as soon as the current slowed up, but the witness had not gone around Albemarle Bend since 1913, and did not know to which side of the old river most of the accretions attached. (R. 143).

The witness said he could state positively that no part of Tullos Island, as shown in original Government survey, 1824, or as shown in survey of 1882 was left. That the survey of the Mississippi River Commission, of 1913, showed the main shore line to be about 1¼ miles east of the eastern shore line of Tullos Island, as it had existed. As (the river at) this bend (Albemarle) progressively ate away the main shore eastward the accretions on the west side (Louisiana) followed it up continuously, survey after survey. *The river maintained about the same width all the time. The accretions on the convex side formed just as the caving ate away the bank on the concave side.* (R. 143-144).

The first Government survey of Mississippi at point in controversy is that of 1823, shown in Chart "M", and blue print "N".

The next survey is the Government land survey of the Louisiana side, made in 1824, shown on Exhibit "A"; also on "B" and "F".

The next was the survey of the Louisiana shore in 1866. There is no record of any part of that survey except the Louisiana shore line. There is nothing here of that survey, except the line that was platted. (R. 147).

The next survey was in 1869-1870 and is shown on land survey chart marked *Exhibit "BB"; it is also shown on Exhibit "H". This was a survey of what is known as Hopkins Island.*

The next survey is the Mississippi River Commission *survey of 1882. This is shown on Exhibit "C";*

also on Exhibits "D", "E", ("H" and "M"). (R. 147-148).

The chart of the Mississippi River Commission, made from *the land survey of 1882, shows the character of timber on what was left of Tullos Island (at that time). There was some cottonwood, some hackberry and some gum noted on the face of the chart.* (R. 151).

The next general survey was in 1894. (R. 151). The lines of the survey of 1894 were platted on the chart of 1882 in red lines. (R. 152).

Capt. West was asked in regard to the word "accretions" shown on the survey, if it was not merely his opinion. He replied: "No, it is little more than a mere opinion. The chart of 1882 shows accretion beyond the Louisiana bank (R. 156) line of 1866, out for a considerable way. The chart of 1913 shows accretions going even beyond the line of 1894. Therefore, the space between these two periods is covered by the chart on the survey of 1913, *which shows the accretions throughout.*

And again, *there had to be accretions in order for the river to maintain approximately the same width throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load of water it has to carry.*

Then my observations of that land have been quite carefully made since 1898. I have been closely observing what the river was doing, as I was responsible all

that period since 1898, for safeguarding against disaster through changes in the river.

Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period *the river maintained about a given width.* Had it been wide and shallow, I should have observed it, and *had it been wide and shallow the caving would have slowed up; but being deep and narrow between the bar lines, and the Mississippi shore, was the cause of the rapid caving throughout, so it is not a mere opinion.* (R. 156-157).

The Mississippi River Commission has no survey (chart) of 1894, only so far as it is shown on the chart of the survey of 1882, in red lines. (R. 157).

The original field notes of the survey of 1894 are in the office of the secretary. He would not give the original notes. They would merely enable you to plat the same lines that he has here. That is the only record that is in shape to be seen, that the secretary has—the plat in red lines on the face of the old chart. That (survey of 1894) was a mere platting on the chart of 1882. They did not go into the question of taking a detailed *topography.* They were only trying to study the change in the river itself.

Comment: This shows there was no topographical survey between 1882 and 1913.

The survey of 1894 was superimposed on the Chart of 1882, and the defendant's witness, Capt. Marshall, fell into the error of applying the elevations and

other topographical data shown by the Survey of 1882 to the Survey of 1894.

Exhibit "I" is a drawing witness got up for the purpose of being annexed to the original bill in this case. The plat merely shows the position of the river with respect to the land lines of 1894. (R. 157-158).

Exhibit "J" shows the position of the Mississippi River, according to the survey of 1913, with respect to the township and section lines on both sides of the river; and it shows the bank line on the Louisiana side, as it existed in 1866, and 1913, and shows the bank lines as they existed after the cut-off had occurred. The position of the river on this chart is the same as the Mississippi River Commission's survey of 1913, as shown on Exhibit "F". (R. 158).

Exhibits "G", "H", "I" and "J" were four blue prints attached to the original bill of complaint, and witness agreed to file the original tracings from which they were made and mark them Exhibits 2, 3, 4 and 5 of his cross-examination. (R. 159).

(These exhibits are to be returned to Capt. West when the case is finished).

(These exhibits were filed with stenographer October 18, 1926). (R. 159).

Exhibit "M" is taken from the survey of 1882. (R. 160).

Chart 17, Exhibits "C" and "D", is shown on Exhibit "N" on a larger scale, and is known by the Government numbers as sheets *Nos. 45 and 46*. (R. 160).

Testimony of Mr. E. T. Purnell.

The witness was born in 1866; is acquainted with the country in the vicinity of Albemarle Bend in Mississippi. (R. 258). In 1867 his father moved to Belleview Plantation owned by Dr. G. W. Kiger. (R. 259-260). They lived on this place from 1867 to 1880. Belleview Plantation is just below Chotard Landing. (R. 260). Witness' father bought 400 acres *above* (opposite) Island 98, and moved there in 1880. (R. 260). Witness' father was William Purnell. His father's place on the Mississippi River, adjoined Maj. Higgins' place on the south. Witness' father's place is spelled on the map (Exhibit "C", Sheet 17, Mississippi River Commission Chart) "Parnell", when it should have been Purnell. This place is on the map as W. Parnell. It lies directly east of *Island No. 98.* The chute between said place and said Island No. 98 was immediately west of his father's place.

The main channel of the (Mississippi) River was west of Island 98. (R. 261).

Witness lived on the *place* from 1880 to 1897, continuously. He had been on Island 98 hundreds of times. It had very heavy timber on it. (R. 262). The timber was virgin growth, Ooak, gum, some four feet through. There were several very large cottonwoods. "One, we knew as the Big Tree 7 or 8 feet through. The big cottonwood tree we measured four feet from the ground. I think it was 37 feet in circumference. There were other trees nearly as large. There is no question whatever that the timber on the island was virgin timber." (R. 262). The main chan-

nel of the river was on the west side of the island—*heaviest against the island*, that is the deepest part of the channel was over next to the island. The channel was never, during his recollection, between the island and the Mississippi shore. (R. 263).

The Vicksburg and Greenville boat used to come up the chute to our landing; but as a regular thing the boats did not run through there. (R. 263). This was during high water; they could not do so in low water. The western side of the island was caving when I first knew it. (R. 263-264). This caving continued. This island entirely caved away. It washed away entirely during the high water of 1894 or 1895. (R. 264). There was not a vestige of it left. (R. 264-265). Up to the complete disappearance of this island the channel was west of the island. (R. 265). There was a towhead over on the Louisiana side opposite the island building up, and as the years went on it grew larger and larger. In high water the boats run between it and the Louisiana shore to make the cut-off. They would do this to keep from going all the way around the bend of the channel.

At all times until 1897 the channel was east of this towhead, towards the Mississippi side. (R. 265).

Mr. R. E. Foster lived at Cotton Wood Plantation, at Shilo Landing, 10 or 12 miles above where I lived. I saw Mr. Foster very seldom. (R. 265-266). He did not visit my section often. (R. 266). As Island 98 was caving away the land opposite on the Louisiana shore extended out each year after each freshet of water, east toward the Mississippi shore. (R. 268).

Witness was on the Newman bar when he was a boy.

When the water was low there was dry land from the towhead to Willow Point. (R. 268).

The low place between Newman's Towhead and the main land (on Louisiana side) where the boats went through in high water, was connected with the main land. My brother walked across there to the Mississippi River one time when I went after him in a skiff. (R. 268-269).

The witness was asked whether the island washed on the north, south or middle, and he answered that it washed all the way down it, until 1894 or 1895—a freshet took it all out. The part in front of Eustatia and Aureton Plantations was the last to wash away. (R. 271).

Witness has a recollection of the island from 1877 or 1878. At this time island extended as far south as the Kiger Plantation.

In 1882 it did not extend as far south as it had when he first knew it. The lower end of the island was cut off considerably. (R. 286).

Witness first knew Hopkins' Island about 1878. The river was then on the Mississippi side of this island, along the east side next to the Mississippi shore; and the river also flowed between Hopkins' Island and the Louisiana shore. (R. 276).

There was a steamboat channel between Hopkins' Island and the main Louisiana shore. (R. 276). Island

98, before the overflows of 1893, '94 or '95, was probably one-half mile long and 200 yards wide. It disappeared suddenly during the high water. (R. 282-283). I saw the trees fall and the last trees on there fell while the water had the land covered. I saw them fall. I was there the next year and the river was flowing over the place where the island had been until the time I left there; no land reappeared where Island 98 had been. (R. 283).

The chute that the witness swam as a boy (the chute that was between Island 98 and the Mississippi shore before Island 98 washed away) was traversed by the Vicksburg and Greenville Packets; the big boats never run through there at all. (R. 283).

We called the Anchor Line Steamboats big boats and the others smaller. (R. 284).

Oraton Plantation was the name of my father's plantation. My stepmother's name was Ora, and he put the "ton" to it and called it Oraton. The place marked "W. Parnell" on the map is the Oraton Plantation. (The stenographer sometimes spelled this name "Aureton" and "Auretion" Plantation). (R. 286).

Island 98 was directly in front or west of this place. (R. 287).

Testimony of Joseph V. De Lahunt.

The witness was 70 years old; is steamboat pilot and captain on Mississippi River from Cairo to New Orleans; had been in Memphis for the last 15 years working for the Government (U. S.) in Second District

as pilot and captain of a steamboat, with headquarters in the U. S. Engineer's Office. (R. 288). Witness went to Vicksburg to live when he was 15 years old (in 1872). Witness was licensed as master and pilot in 1879 or 1880. (R. 288-289). He was pilot first on the Str. Spengler, from Vicksburg to above Greenville (this passed the place involved in this litigation) for about one year. He was then pilot on the Str. Kate Dixon. (R. 289). Vicksburg and Greenville Packet, for about two years; this boat sank at Meyersville in 1882.

Witness was next on the Str. Issaquena, running in same place, until about 1887. (R. 289-290). He was then on the Str. Phil Armour in same trade, for a short time, and then on the Str. Morning Star for about two years, making three trips a week. He was then on the Str. Ruth in same trade for about one year, and then on the Str. Chatahoochie in same trade. (R. 290). The Chatahoochie burned, and witness was then on the Annie Laurie, same trade, making three trips per week; was pilot a while, and then became captain; was on this boat 3 or 4 years. (R. 290-291). He then went on the Str. Bell of the Bend, in same trade, until she was laid up in 1908. (R. 291). All the boats he was on were in the trade between Vicksburg and Greenville.

The Belle of the Bend was laid up in 1904. (R. 291). The boats on which the witness acted as master and pilot during all the time above mentioned passed up and down by Island No. 98, to the west side of same. (R. 292). Not a bit of it was left. The caving caused it to disappear. It started to cave at the head and kept

chipping away, and caved all away. In 1897 I run over the top of the island with a loaded steamboat over the top of the place where Island 98 had been. There were no trees to indicate where the island had been; they went to China I reckon. (R. 292). Before Island 98 caved away the channel ran west of it, and east of Hopkins' Island. (R. 293). Island 98 went away slow. Just kept chipping off. The caving occurred on the outside, the west side. As Island 98 chipped away, it filled up on the Louisiana side. During the progress of the caving you could not land at the island. I never landed there in my life, because of the snags and trees—it was dangerous. (R. 293-294). The *big timber on Island 98* caved into the river. In 1897 or 1898 there was nothing left of the island; it had entirely disappeared. Witness passed there 6 times a week. (3 trips—1 down and 1 up).

Between Island 98 and the Mississippi shore, there was no channel at any time. (R. 294). When witness first knew Island 98, it was 1½ miles long, something like that. (R. 298). There was no channel west of Hopkins' Island. The channel run between Hopkins' Island and Island 98 when I first knew it. (R. 299). The only islands I knew of were Hopkins' Towhead and Island 98. (R. 299). Hopkins' Towhead was west of Island 98. Hopkins' Island did not wash away altogether while I was there, which was until 1908. (R. 299-300).

Comment: The island witness refers to as Hopkins' Island or Towhead, is evidently the same as is generally called Newman's Towhead.

COMMENT ON THE TESTIMONY OF DEFENDANT'S WITNESSES.

Capt. H. M. Marshall, for defendant.

Defendant's counsel presented to witness what is marked as Deft. Exhibit 1, which is complainant's Exhibit "A," and defendant Exhibit 2, township plat in Mississippi, and the witness said:

> "The bank line in Louisiana, as shown on the Mississippi township plat, is not the same as the bank line in Louisiana, shown on the township plat of Louisiana."

In other words, the river is not the same as shown on the two maps. (R. 170).

> "It is not a fact that the land on the Mississippi side opposite Willow Point in Louisiana gradually wore away by erosion, while the shore opposite at Willow Point gradually extended eastward by accretion, *until it extended to a distance of approximately 5 miles.*" (R. 170-171).

Comment: If the witness *merely* meant by this statement, that the Louisiana shore had not extended approximately 5 miles by accretion, there might be some foundation for the testimony, as the extension was more northeastward than eastward, and the extension may not have been as much as five miles; but if the witness intended for the Court to believe from his testimony that the Mississippi shore line did not wear away by erosion, and the Louisiana shore line at Willow Point did not gradually extend eastwardly or

northeastwardly by accretion, then his testimony is without foundation, and is contradicted not only by the witnesses who testified from personal knowledge, but by the United States surveys of 1823 and 1824; and the Mississippi River Commission surveys of 1882 and 1894, introduced in evidence herein.

Referring to three sheets being Exhibits 4 "A," "B" and "C," blue prints of surveys of the Mississippi River Commission, the witness said:

> "On these three sheets the shore line of 1882 is marked along the western limits or western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. *To the east of this island is shown the channel of the Mississippi River at the time the survey was made in 1894.* (R. 171-172).

The fact that the island elevation is over 100, which is about the elevation of the bank line of the Mississippi shore, the location of the channel of the Mississippi River east of the high land shows that the river had gone around the upper end of the island, and *was flowing to the east of the island.* (R. 172).

And this shows that the island could not have washed away. (R. 173).

Comment: This testimony is without foundation. The surveys of the Mississippi River Commission need only be examined to show its fallacy.

The witness gives as a reason why the island could not have caved away that the charts show that the

elevation of the island *is* over 100, which is about the elevation of the bank line on the Mississippi shore.

Capt. West's testimony (R. 149) shows that the survey of the Mississippi River Commission of 1882, shows the elevations of the banks of the river on both shores, for about 1 mile back from the river; while on (R. 151), he further points out that the survey of 1894 *did not show the topography. It only took in the change in the position of the river alone*, and that survey was platted on the charts of *the 1882 survey.* (In other words, there was no new chart made of the survey of 1894).

To show the inaccuracy of this statement of the witness, Capt. Marshall, it is only necessary to examine chart of the Mississippi River Commission, Sheet 17, showing first the survey of 1882, in black lines; Island 98 being east of the channel. This same chart shows the survey of 1894, superimposed on said chart in red lines. The red solid lines showing the Louisiana shore line and the Mississippi shore line and the red broken lines showing the bar lines on each side of the river. In 1882, there was only a small chute east of Island 98. While in 1894, the Louisiana bar line had extended in a direction a little north of east from Willow Point, until it reached what was the Mississippi shore line of 1882, just below Duvall's Landing, and between Ingomar and Albemarle Plantations; that this Louisiana bar line extended over a part of what had been in 1882, Albemarle Plantation in the State of Mississippi, and crossed the chute between said plantation and what had been Island 98, in 1882. The commission's survey of 1882 shows that a part of Tul-

los Island, or Island 98, still existed at that time. The elevation could well show 100 on that survey, while the survey of 1894 shows that Island 98 had entirely disappeared at that time.

The survey of 1894 was, as stated, superimposed on the chart of 1882, hence, the elevations on this chart refer solely to the elevations as they existed in 1882, and not to the time of the survey of 1894, or the elevation of that year, as none were taken in the survey of 1894. That, in 1894, all of Tullos' Island had washed away, hence, the elevation of Tullos' Island, which did not exist in 1894, was not shown to be, and could not have been, 100.

Another inaccuracy of this testimony is that the channel of the river flowed east of Tullos' Island in 1894. The survey of the Mississippi River Commission of 1894 showed that the bar line of Louisiana extended over a small part of the northwest corner of where said Island 98 had been, and that what had been the location of said island was then the channel of the river; hence, the channel could not be flowing east of said island.

This witness further states on page of R. 173, that "the fact that the island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the island was 50 feet above the water surface at the time of the survey, with trees growing on top of it." While this may have been true at the time the survey was made in 1882, it was not true at the time of the survey in 1894, as the island is shown by that survey

to have disappeared, and a small part of the place it formerly occupied to have been covered by a sandbar, which made out from Willow Point, in Louisiana, and the balance of the place it formerly occupied was in the channel of the river.

On R. 173, it is shown *he had not seen the Island since 1890.*

Comment: Hence, his whole testimony that it had not disappeared results from deductions made from the surveys of the Mississippi River Commission of 1882 and 1894, and what he saw in 1890.

On R. 174, the witness says:

> "Of course everybody knows that an Island cannot be washed away and then four years later be built back with big trees growing on it, *as shown by the survey.*"

Comment: The witness had just stated he saw Island 98 in 1890, and is now assuming that the survey of 1894, four years later, showed the same island with trees growing on it. The witness was evidently ignorant of what the survey of 1894 showed, and had assumed that the survey of 1894, like the survey of 1882 showed the topography and elevation, when it did nothing of the kind, but showed only the changes in the position of the river alone. (R. 149-151).

The witness says the ground west of the island is 20 feet lower than the island, and that this low ground west of the island was the location of the river in 1882, which shows that the Mississippi River had gone around the head of the island and over to the east,

and a bar had formed from the Louisiana side, over to the head of the island. If this island had washed away, and accretions had made from the Louisiana shore, this low ground *could not have occurred*, if the Mississippi River had gradually moved over toward the State of Mississippi building an accretion on the Louisiana shore. * * * *That accretion would have been higher adjacent to the Louisiana shore and lower as the accretions were formed from year to year, toward the* Mississippi shore. (R. 174).

Comment: This whole statement is not based on any fact, and is merely a theory of the witness, and his theory is shown, by eye witnesses and the surveys, not to be correct.

Capt. George Prince said that trees grew out on Willow Point Bar, and where the trees grew the land built up higher; *higher than the* mainland, and that the point where this bar got higher *was called Newman's Towhead;* that a towhead is a kind of middle ground in a river; a small island that trees and bushes grow on; that the river was toward the Mississippi side of the towhead. (R. 26-27).

The evidence shows that the trees on this towhead in 1900 were 8 or 10 inches in diameter. (R. 29).

Capt. Prince further said a towhead was a *high place on a sandbar*, where willows and trees grew, generally connected with the main shore. (R. 32).

Mr. Ernest Newman said the Newman Towhead was at Willow Point Bar as far back as he could recollect (1879). That you could go from the main Louisi-

ana shore to Newman's Towhead; that the channel was east of the towhead, until after the cut-off in 1912. (R. 52).

Mr. Newman said he kept their cattle on Newman's Towhead. The water in 1897 was high, *and came through the depression* where the channel afterwards came through. (R. 63).

(This was the depression between Newman's Towhead and the mainland).

Mr. George R. Newman said, in speaking of Willow Point Bar:

> "There was a depression that had no timber on it; that was very narrow." (R. 68).

(This shows that the bar became higher further out from the main shore, where the timber again grew).

Mr. I. B. Beard said, referring to Willow Point Bar:

> "The main bar was already there, and the towhead (referring to Newman's Towhead) * * * he did not know how much a year, but each year it got higher and higher." (R. 188).

Capt. Reed, speaking of Willow Point Bar, said a Towhead appeared on the white sandbar. (R. 99-100).

It was close to the Louisiana shore. (R. 100).

The Towhead *continued to grow in height and size.* (R. 100).

The second towhead was about 150 yards from the timber line on the bank, *with a depression between it and the bank.* (R. 115-116).

In extremely high water some small boats navigated that depression. (R. 107).

Comment: This demonstrates the inaccuracy of the theory of the witness that were the land in question accretions to the Louisiana shore, said depression could not have existed.

We think the Court would take judicial cognizance of the fact of the existence of towheads; they are usually at the outer and upper extremities of sandbars, and *there is a depression* between the Towhead and the other part of the bar. These towheads are formed on the convex, or bar side of the river. The reason of the formation of these towheads would seem to be about as follows:

On the convex, or bar side of the river, there are often eddies, where the current runs up stream, and at the upper end of the eddy, where it comes in contact with the down current for a certain distance, there is no current, or it is very slack. Where the current slackens most, on a silt bearing river like the Mississippi, the silt deposits are greater and raise the bar higher and faster than in other parts. After it is above the water, being higher, trees appear quicker, and they, in turn, check the current and cause the silt to deposit, during highwaters. In periods of no water, the wind blowing the sand against the trees will continue to raise the Towhead higher, in the same manner as obstructions cause snow to pile up.

Where a bar begins to form against the bank, the fact that in its formation it should raise more rapidly, out a little from the bank, would not prevent it from being accretion. But if such were true, it would be entirely immaterial in this case, as an island appearing on one side of the channel of the stream belongs to the State on that side of the stream. Therefore, the testimony of Capt. Marshall on this point cannot in any way affect the case of complainant, as the testimony conclusively shows that there is often a depression between the outer edge of the bar and the mainland.

Capt. Marshall, for the defendant, further stated that he was at Island 98 in the *high water* of 1890. That the mail boat came up the chute (between the Island and the Mississippi shore) and put off mail for Jack Chilton. While the mail boat was passing through the chute an Anchor Line boat passed down the *main channel* on the western side of both islands. There were two islands with a chute, *through which there was a swift current*, running between the two, and there were trees growing on both islands. There was a channel east of both islands. *Without being able to say how wide it was, it was possibly 100 feet wide.* (1890). (R. 175).

(N. B. The stenographer skipped from page 261 to 270 of the original evidence). (R. 174).

This statement is no doubt entirely true but it has nothing to do with the condition existing at the time of the 1894 survey, four years later, except that the swift current passing through the chute between Island 98 and the island to the west and a little above, and overlapping a little at the upper end, would indicate that

this swift current would likely wash away the lower island, or Island 98. The position, as above, of the other island in 1890, is shown in (R. 171).

On R. 177, Mr. Marshall stated that the surveys of 1894 showed bar lines, timber lines, high ground, low ground (but) nothing was said about accretions.

Comment: If the map showed the extension of the bar line, it necessarily showed the accretions, as the extension of the bar attached to the bank, can only be produced by accretions.

The witness further said on the same page (R. 178) *that the survey of 1894* of the Mississippi River Commission *showed Tullos' Island on said map.*

Comment: The error of the witness in this regard has heretofore been explained. He evidently did not know that no new chart was made from the survey of 1894, but that this survey was superimposed on the Chart of 1882. (R. 149-151-152).

All of the testimony of Mr. Marshall showing topography, elevations, etc., in 1894, is based on the error which arose from his using the chart of the survey of 1882.

On R. 175, Mr. Marshall estimated that the chute was 100 feet wide.

On R. 181, Mr. Marshall said that this chute, which was formerly on the eastern side of Island 98, was within the bed of the river in 1896. (He shows, on same page, he meant 1894).

Comment: Now if the 100 feet wide chute was in the bed of the river at the time of the survey of 1894 is it not reasonable to conclude that Island 98 was also in the bed of the river?

By referring to the survey of 1894, it is shown that where a little part of the NW¼ of Island 98 had been in 1882 was then the bar line of the edge of the water on the Louisiana side, and for the bar line of the Louisiana side to have occupied this position, that part of the Island 98 *necessarily* disappeared. This survey further showed that the balance of the position occupied by said Island in 1882 was in the bed of the river in 1894.

Capt. West, the Civil Engineer, and member of the Mississippi River Commission, so interpreted the survey of 1894, while Capt. Marshall is attempting to make a different interpretation of the same chart, which was prepared by the Mississippi River Commission, of which Capt. West is a member, being the civilian engineer thereon.

On R. 181, Capt. Marshall further said this survey of 1894 showed Island 98 on the western side of the channel. Complainant answers this by referring to the survey of 1894, which shows on its face that Capt. Marshall is in error in this regard.

This witness had not seen Island 98 since 1890, and could not know personally whether it caved away.

Certainly these deductions of Capt. Marshall, based on the errors of fact, and ignorance of what the survey of 1894 showed, cannot overthrow the testi-

mony of the eye witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894.

C. F. Hume, for defendant, said he went to Chotard in October, 1896. (R. 191).

That he was familiar with Tullos' Island, or Island 98. The river was eating in on the Mississippi side. The upper part of that land (island) at that time was west from Chotard Landing, across the channel of the river. The river was east of this island. *At that time we called it* a bar. (R. 191).

Comment: It is patent that this witness is speaking of Newman's Towhead, as he said they called it a bar, *which was across the river in 1896*, from Chotard Landing (in Mississippi). It could not have been Tullos' Island, or Island 98, as that had disappeared. The witness said, the more it would cave here (Chotard Landing) the more it (the bar across the river) would build *north and east* from the lower part. There was nothing but the river across from the island. When the water was high, it was an island *then, all right enough.* When the water was high, I have known a boat to go on the west side of the island. (R. 192).

Had Mr. Hume been a witness for complainant he could not have described Newman's Towhead more accurately. The timber on this island was principally *cottonwood* and *willow.* Comment: Had this been Tullos' Island there would have been other kinds of timber thereon. He thought some was 3 feet in diame-

ter. He thought the trees were 40 or 50 years old. (R. 192-193).

(Comment: On Newman's Towhead 50 years before the date of this testimony in 1926, this willow was 3 to 5 feet high. R. 88-89).

He had not the remotest idea of the acreage in the island. He judged the island to be 4 or 5 miles from Henderson's up to Newman's Point, or about there, where it struck the river, and around the current 12 or 15, possibly 16 miles. Where the big timber grew it was higher, he thought 20, 25 or maybe 30 feet. He was there until 1907, and this island built all the time—growing larger. (This was exactly what Newman's Towhead did). (R. 194).

The island was building northeast every year while he was there (1896 to 1907). (R. 196).

Witness guessed that was Island 98, *if you count the bar an island.* It was caving on the Mississippi bank. (R. 197). *The island did not cave any that witness knew of.* (R. 197). He went over to the island from 2 to 40 or 50 times a year. *Mr. Purnell sometimes went with him.* He was keeping store for Mr. Purnell. (R. 197). Mr. Purnell's testimony shows this was Newman's Towhead. (R. 265).

Witness was on this island a year ago, and the island there now is the one he referred to. When he went there in 1896 the channel was between the Mississippi shore and the island. The Anchor Line Steamers were running between the island and the Mississippi shore. During high water boats could go west of the islands. (R. 198).

He was on the island from 2 to 40 or 50 times a year, and if there was any other timber on it than cottonwood and willow, he did not know it. (R. 199). The big timber *was back a half mile from the water's edge*, and practically straight across the river from Chotard Landing. (R. 201).

Comment: Had this been Tullos' Island the big timber would not have been a half mile back from the water.

Witness never knew whether it was a part of Willow Point, or Newman's Towhead, or not. (R. 201). Witness further said you could go from the island to the Louisiana shore in low water, at all times between 18[illegible] and 1907; and the island was making out northeast during all that time, and there was just a depression between this island and the Louisiana shore that steamboats could go through in high water. (R. 205).

During the time this bar was getting larger the shore on the Mississippi side was caving. In 1896 this island was more than 6 miles long and making toward Mississippi. (R. 205).

Witness said he did not know, *of his own knowledge, whether the island he referred to was the original Island 98, or not.* It was connected with the Louisiana shore. (R. 206-207).

This witness has, no doubt, truthfully stated the conditions as he saw them; and the physical conditions were pretty much as he stated them. *He did not know whether the land he spoke of was Tullos' Island*, or Island 98, or not. He knew nothing about it before

1896, a time when the evidence of the eye-witnesses, and the survey of the Commission in 1894, showed that Island 98 had disappeared. The fact that he heard what was doubtless Newman's Towhead called Island 98, could not overthrow the testimony, above recited, of complainant.

This witness described Newman's Towhead perfectly, and with all the evidence in the record of eye-witnesses, and people who knew that Island 98 had entirely disappeared, also shown by the survey of 1894, conclusively shows that the island described by him was Newman's Towhead.

Witness said he hunted on the island with Mr. Purnell, and the Newmans who owned the Towhead testified that Mr. Purnell hunted over there on Newman's Towhead.

That would leave a clear river from Chotard Landing in Mississippi to Newman's Towhead in Louisiana, *just as described by this witness.* Assuming the island the witness speaks about to be Newman's Towhead, his testimony fits that of the complainant like a glove fits the hand.

Mr. R. E. Foster, for defendant, said he knew Island 98. (R. 208-209). He had three places on the river in Mississippi, and the island was in sight of the lower place. He said the island never all washed away. *If it did, he did not see it.* That the main part was there now.

Between 1882 and 1912 the Mississippi shore caved rapidly. (R. 210). He could see the island from

in Albemarle Bend, where the revetment was done on the concave side of the river, and Newman's Towhead was on the convex side, is it reasonable that Newman's Towhead would have washed away prior to 1912? If it did not wash away prior to 1912, it did not afterwards, as the land just east of the present river is a part of the land in controversy, and this being Louisiana territory it necessarily follows that all west of the present river is also Louisiana territory. It could not have washed away since 1912 and have reformed and have grown cottonwood the size of the trees thereon; besides, there is no such contention.

If the river maintained about the same width of three-fourths of a mile, and there were no islands in the river at this point, after 1897, until after the cut-off of 1912, would not Island 98 necessarily have disappeared?

Complainant contends the evidence is conclusive that no island existed at this point between 1897 and 1912, and that Newman's Towhead, Louisiana territory, was left east of the channel by the avulsion of 1912.

In conclusion, complainant contends that it has established that the boundary between the States of Louisiana and Mississippi at the point in controversy, as shown by the record, is the old channel of the Mississippi River, which was abandoned as a result of the avulsion of 1912, and that the boundary in said old channel was changed eastwardly by accretion to New-

man's Towhead, after the avulsion, as long as the water continuously flowed through said abandoned channel.

Complainant prays that your Honors so hold, and that you appoint a Commission to ascertain and mark the said boundary line.

Respectfully submitted,

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